HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2875 OF 2017

ORDER:

The petitioners, who are arraigned as accused Nos.1 and 2 in Calendar Case No.63 of 2015 on the file of the III Additional Judicial Magistrate of First Class, Khammam, Telangana State, seek to quash the proceedings in the said Calendar Case by exercising the power under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. The petitioners along with accused No.3 alleged to have committed the offences punishable under Sections 420 and 506 read with 34 IPC.

3. Heard Sri V. Sai Kumar, learned counsel for the petitioners and the learned Additional Public Prosecutor for the State of Telangana.

4. The learned counsel would submit that at the most the case ought to have been under the provisions of Negotiable Instruments Act, but the police concerned coloured it as the offence under penal law to settle the oodles of respondent No.2 - *de facto* complainant, which is in complete deviation of the law laid down by the Hon'ble Supreme Court. He would submit that none of the ingredients of Section 34 IPC are attracted; mere breach of terms of contract would not give rise to criminal action when civil remedy is available; the

offence punishable under Section 506 read with 34 IPC is alleged only to see that criminal action arises though, such an incident, as narrated by the *de facto* complainant, never did take place. The learned counsel also would submit that there was an agreement between the parties on 21.07.2014 and, thereafter, there was exchange of communication between the parties for payment of amounts and, therefore, to quash the proceedings.

5. The learned Additional Public Prosecutor resists the request.

6. A perusal of material papers filed by the petitioners would reflect that the *de facto* complainant, who is running a mirchi business under the name and style 'P.V. Traders and Eswar Traders' at Khammam, exported the purchased chillies of 44 loads during the period from 28.02.2011 to 07.12.2011 to the petitioners and one Promod Kumar Agrawal (accused No.3), who is not a party to the present petition, at Kolkata who are doing business in the name and style 'Srilaxminarayana Udogu Private Limited', and as against the due amount of Rs.8.00 Crores, they paid Rs.5.00 Crores and given four (4) advance cheques for the value of a total sum of Rs.1,44,50,000/-, but when the *de facto* complainant tried to encash them, he found that there was no balance available to the credit of the petitioners for withdrawal. When the *de facto* complainant asked the petitioners and accused No.3 to pay the amount, they alleged to have threatened him with dire-consequences, in case he insists for payment.

That has been the sum and substance of the complaint lodged by respondent No.2 - *de facto* complainant against the petitioners herein and accused No.3.

7. The complaint was lodged by the *de facto* complainant on 24.01.2013 at 9.00 p.m., and the same was registered as Crime No.11 of 2013 for the offences punishable under Sections 420 and 506 read with 34 IPC and First Information Report was issued. Having conducted investigation, charge sheet was filed by the Inspector of Police, Khammam Police Station on 29.01.2015 alleging the aforesaid offences. It appears that, during the course of investigation, a *panchanama* was also conducted and certain records appear to have seized.

8. The learned counsel has drawn attention to the agreement said to have entered into by petitioner No.2 and accused No.3 with the *de facto* complainant on 21.07.2014. Certain clauses have been incorporated therein as to mode of collection of dues by arriving at the amount to be paid and even it reflects that the *de facto* complainant filed certain cases viz., C.C. No.119 of 2012 for dishonor of Rs.25.00 lakhs cheque; C.C. No.120 of 2012 for dishonor of Rs.40.00 lakhs cheque; C.C. No.121 of 2012 for dishonor of Rs.40.00 lakhs cheque ; and C.C. No.122 of 2012 for dishonor of Rs.40.00 lakhs cheque. Even the company of petitioners filed C.S. Nos.215 of 2013 and 99 of 2013 on the file of the High Court of Kolkata and, thus, stated therein

that petitioner No.2 and accused No.3 paid a sum of Rs.10.00 lakhs in two installments of Rs.5.00 lakh each to the *de facto* complainant. Having referred to the payments earlier made and due amounts and pendency of cases, certain terms and conditions were incorporated therein mentioning that the parties respectively have to withdraw their respective cases filed by them, and in case any default is committed by petitioner No.2 and accused No.3 in paying two consecutive installments, the agreement stands cancelled as per one of the covenants therein.

i) Thereafter, a letter addressed by the *de facto* complainant dated 23.07.2015 to petitioner No.2 and accused No.3 is referred to by the learned counsel. There appears to be some sort of arrangement as regards non-compliance of terms and conditions of the agreement by petitioner No.2 and accused No.3. Further, the letter addressed by the petitioners on 26.07.2016 to the *de facto* complainant is pointed out by the learned counsel and it shows the endorsement made by the *defacto* complainant as to the acknowledgment of Rs.2.00 lakhs.

9. Now, the question that arises for consideration is:

> Whether basing on the Photostat copies of aforesaid documents, can this Court adjudicate upon whether there was a dishonest intention from the inception?

10. For two reasons, the submissions of the learned counsel for the petitioners, are not accepted. Firstly, the authenticity of the correspondence and the effect of agreement require consideration, which can only be done by conducting a full-fledged trial. Second, whether the dishonest intention can be inferred right from the beginning, is difficult to view without the evidence of parties on record. It appears that the dispute has arisen on account of failure to pay the amounts as agreed upon, but even an offence under Section 506 IPC is also clutched. Though, the learned counsel pointed out that the *de facto* complainant just made a passing remark only to see the penal offences are attracted to convert a civil dispute into criminal action, but it is difficult, at this stage, to view on the lines, as argued by the learned counsel. Somehow, the petitioners have not chosen to file statements of witnesses recorded under Section 161 (3) of the Code. The decision in **M/s. Siddhartha Electronics and another v. M/s. Videocon International Limited, Begumpet, Hyderabad and another**[1], relied on by the learned counsel for the petitioner is to the effect that to constitute an offence of cheating, intention to deceive must be in existence at the time when inducement was made. But, the fact-situation therein would reflect that there were inherent improbabilities even in the very complaint on account of non-mentioning of all the relevant details touching the cheque in question.

[1]. 2003 (3) Crimes 33

11. Therefore, the present Criminal Petition is dismissed. Since the Calendar Case relates to the year 2015 and the Crime relates to the year 2013, the learned III Additional Judicial Magistrate of First Class, Khammam, is directed to dispose of the Calendar Case No.63 of 2015, as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of a copy of the order, uninfluenced by the observations, if any, made by this Court hereinabove.

12. The learned counsel for the petitioner would urge to dispense with the appearance of the petitioners as there is life threat to them if they attend the Court. It is open to the petitioners to make a request before the learned Magistrate under Rule 37 of Criminal Rules of Practice or to invoke the provisions of Section 205 of the Code, and the learned Magistrate may dispose of the same in accordance with law.

As a sequel thereto, miscellaneous petitions, if any, pending in the petition stand closed.

A. SHANKAR NARAYANA, J

April 17, 2017.
Mgr